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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
WEST, JEFFREY R	

ART UNIT	PAPER NUMBER
2857	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,027	DEN HEUVEL ET AL.	
	Examiner	Art Unit	
	JEFFREY R. WEST	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *139-176* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *139-176* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 June 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 24, 2008, has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 139-142, 145-150, 152-161, 163-170, and 172-176 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,626,629 to Faltys et al.

With respect to claim 139, Faltys discloses a system for performing a test of a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to allow a clinician to perform one or more of selecting and customizing the test for the recipient (column 7, lines 41-65 and column 15, lines 34-55), and further configured to receive result data from the test (column 8, lines 10-43); and a recipient subsystem, comprising a recipient interface (column 5, lines 51-66), configured to perform the test received from the clinician subsystem to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6).

With respect to claim 140, Faltys discloses a device interface configured to communicatively couple said recipient subsystem and the prosthesis, and further configured to communicate the test from said recipient subsystem to the prosthesis (column 5, line 51 to column 6, line 17 and Figure 1).

With respect to claim 141, Faltys discloses one or more computers configured provide said clinician interface and said recipient interface (column 5, lines 21-30).

With respect to claim 142, Faltys discloses that said computer configured to provide said clinician interface and said computer configured to provide said

recipient interface are the same computer (column 5, lines 21-30 and column 22, line 61 to column 23, line 7).

With respect to claim 145, Faltys discloses that the prosthesis is configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 146, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 147, Faltys inherently discloses a storage medium configured to store said selected or customized test (column 6, lines 43-55).

With respect to claim 148, Faltys inherently discloses a storage medium configured to store said result data (column 6, lines 60-63 and column 7, lines 41-65).

With respect to claim 149, Faltys discloses that said storage medium is a portable storage medium (column 22, lines 35-44).

With respect to claim 150, Faltys discloses that the recipient subsystem is further configured to deliver the result data to the clinician subsystem, and further wherein the clinician subsystem is further configured to perform an assessment of the delivered result data (column 8, lines 2-43).

With respect to claim 152, Faltys discloses that said device interface is an external port on said recipient subsystem (column 5, line 51 to column 6, line 17, Figure 1, and column 22, line 61 to column 23, line 7).

With respect to claim 153, Faltys discloses a cable coupled between said recipient subsystem and said prosthesis (column 5, line 51 to column 6, line 17 and Figure 1)

With respect to claim 154, Faltys discloses that said clinician subsystem is configured to control said recipient subsystem as the test is being performed (column 17, lines 35-57).

With respect to claim 155, Faltys discloses that said clinician subsystem is configured to commence the test being performed by the recipient interface (column 15, lines 19-28, column 15, lines 37-48, column 16, lines 36-38).

With respect to claim 156, Faltys discloses a method for performing a test of a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: configuring the test via a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to allow a clinician to perform one or more of selecting and customizing the test for the recipient (column 7, lines 41-65 and column 15, lines 34-55), and further configured to receive result data from the test (column 8, lines 10-43); delivering said configured test to a recipient subsystem (column 6, lines 51-55 and column 9, lines 40-61), comprising a recipient interface (column 5, lines 51-66); performing said configured test of the prosthesis on said recipient subsystem to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6); delivering the result data to the clinician subsystem (column 8, lines 2-43); and providing the result data to the clinician via the clinician subsystem for assessment (column 8, lines 2-43).

With respect to claim 157, Faltys discloses that the prosthesis is configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 158, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 159, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 160, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 57-61).

With respect to claim 161, Faltys discloses that the storage medium is a portable storage medium (i.e. as part of a portable device) (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 163, Faltys discloses that performing said configured test further comprises: controlling the recipient subsystem as the test is being performed (column 17, lines 35-57).

With respect to claim 164, Faltys discloses that performing said configured test further comprises: commencing, but not controlling, the test being performed by the recipient interface (i.e. in the sweep test, for example, the test is commenced after which time the test proceeds automatically to repeat current application without any subsequent control as long as the tones are in sequence) (column 16, lines 36-49).

With respect to claim 165, Faltys discloses a computer readable medium comprising computer code instructions which, when executed by a computer system, cause the computer system to (column 5, lines 19-25) perform a test method having one or more implantable components implanted in a recipient (column 5, lines 19-21), the method comprising: configuring the test via a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to allow a clinician to perform one or more of selecting and customizing the test for the recipient (column 7, lines 41-65 and column 15, lines 34-55), and further configured to receive result data from the test (column 8, lines 10-43); delivering said configured test to a recipient subsystem (column 6, lines 51-55 and column 9, lines 40-61), comprising a recipient interface (column 5, lines 51-66); performing said configured test of the prosthesis on said recipient subsystem to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6); delivering the result data to the clinician subsystem (column 8, lines 2-43); and providing the result data to the clinician via the clinician subsystem for assessment (column 8, lines 2-43).

With respect to claim 166, Faltys discloses that the prosthesis is configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 167, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 168, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 169, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 57-61).

With respect to claim 170, Faltys discloses that the storage medium is a portable storage medium (i.e. as part of a portable device) (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 172, Faltys discloses that performing said configured test further comprises: controlling the recipient subsystem as the test is being performed (column 17, lines 35-57).

With respect to claim 173, Faltys discloses that performing said configured test further comprises: commencing, but not controlling, the test being performed by the recipient interface (i.e. in the sweep test, for example, the test is commenced after which time the test proceeds automatically to repeat current application without any subsequent control as long as the tones are in sequence) (column 16, lines 36-49).

With respect to claim 174, Faltys discloses a system for performing a test of a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: means for configuring the test via a clinician subsystem (column 5, lines 35-50) configured to allow a clinician to perform one or more of selecting and customizing the test for the recipient (column 7, lines 41-65

and column 15, lines 34-55), and further configured to receive result data from the test (column 8, lines 10-43); means for delivering said configured test (column 6, lines 51-55 and column 9, lines 40-61) to a recipient subsystem (column 5, lines 51-66); means for performing said configured test on said recipient subsystem of the prosthesis to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6); means for delivering the result data to the clinician subsystem (column 8, lines 2-43); and means for providing the result data to the clinician via the clinician subsystem for assessment (column 8, lines 2-43).

With respect to claim 175, Faltys discloses that the prosthesis is configured to store said selected or customized test (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 176, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 143, 144, 151, 162, and 171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faltys in view of U.S. Patent No. 5,909,497 to Alexandrescu.

As noted above, the invention of Faltys teaches many of the features of the claimed invention and while the invention of Faltys does teach a computer that process software instructions and output signals to perform testing of a hearing prosthesis through a recipient interface as well as allowing visualization of results by a clinician through a clinician interface, Faltys does not explicitly indicate that the interfaces are provided by separate remote computers connected by the Internet.

Alexandrescu teaches a programmable hearing aid instrument and programming method thereof including a recipient interface (column 4, lines 4-19) provided by a computer located remote from a clinician interface (column 8, lines 19-33) wherein the recipient interface is operable to obtain software instructions from the hearing prosthesis (column 5, lines 37-49) as well as deliver data specific to the hearing prosthesis (i.e. results) electronically to the clinician/specialist interface (column 5, lines 17-20) using the Internet (column 7, line 66 to column 8, line 4).

It would have been obvious to one having ordinary skill in the art to modify the invention of Faltys to explicitly indicate that the interfaces are provided by separate remote computers connected by the Internet, as taught by Alexandrescu, because, as suggested by Alexandrescu, the combination would have improved the recipient's programming of the device by providing specific programming for the environment in which the recipient is intending to use the device (column 8, lines 19-33) while allowing an experienced specialist to obtain response data from the environment to aid in tailoring the response parameters for the particular environment (column 1, lines 11-18, column 5, lines 17-20, and column 8, lines 5-18).

Response to Arguments

7. Applicant's arguments with respect to claims 139-176 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 6,334,072 to Leysieffer teaches a system for performing a test on a hearing prosthesis implanted in a recipient (column 8, lines 24-26) comprising: a testing computer (column 6, lines 49-52) comprising a processor configured to process software instructions and to output signals in response to said processed software instructions (column 7, lines 38-52); a prosthesis interface configured to transfer said outputted signals from said testing computer to the hearing prosthesis interfaced with said testing computer (column 6, lines 45-64); and a recipient interface configured to receive a control input from the recipient of the hearing and to cause said processor to perform said test in response to said control input (column 6, line 65 to column 7, line 7).

U.S. Patent No. 6,115,478 to Schneider teaches an apparatus for and method of programming a digital hearing prosthesis comprising a local system and computer and a remote system and computer wherein the remote system controls the local

system to initiate synthesizing signals for transmission to the hearing prosthesis (column 9, lines 50-58).

U.S. Patent No. 6,879,693 to Miller et al. teaches a method and system for external assessment of hearing aids that include implanted actuators.

U.S. Patent Application Publication No. 2002/0176584 to Kates teaches an apparatus and methods for hearing aid performance measurement, fitting, and initialization.

U.S. Patent No. 6,366,863 to Bye et al. teaches a portable hearing-related analysis system.

U.S. Patent No. 6,115,478 to Schneider teaches an apparatus and method of programming a digital hearing aid.

U.S. Patent No. 4,847,617 to Silvian teaches a high speed digital telemetry system for implantable devices.

U.S. Patent No. 5,609,616 to Schulman et al. teaches a physician's testing system and method for testing an implantable cochlear stimulator.

EP Patent Application Publication No. 0 124 930 to Crosby et al. teaches a cochlear implant system for an auditory prosthesis.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY R. WEST whose telephone number is (571)272-2226. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on (571)272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey R. West/
Primary Examiner, Art Unit 2857

April 7, 2008